

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA

KATHLEEN MOLLER,

Plaintiff,

v.

MARTIAN SALES, INC.; JOPEN,
LLC; JOHNSON FOODS, LLC; LP
IND., LLC; CAG HOLDINGS, LLC;
RMH HOLDINGS, LLC; ABC
INSURANCE COMPANY and John
Does 1-4,

Defendants.

*
*
*
*
*
*
*
*
*
*
*

CIVIL ACTION NO.

2:24-CV-228-WBV-DPC

THE HONORABLE WENDY B. VITTER

MAGISTRATE JUDGE DONNA PHILLIPS
CURRAULT

**DEFENDANT’S MEMORANDUM IN SUPPORT OF MOTION TO EXCLUDE
PLAINTIFF’S EXPERT DR. SARAH D. KOWITT UNDER FED. RULE OF EVID. 702**

Defendant JOpen, LLC (“Defendant” or “JOpen”) hereby files this Motion to Exclude Plaintiff’s Expert Witness Dr. Sarah D. Kowitt under Federal Rule of Evidence 702 and *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993) and incorporated memorandum of law.

I. INTRODUCTION

Plaintiff offers Dr. Kowitt as a purported expert on warnings to opine on the adequacy of Defendant’s warnings on the O.P.M.S. Silver kratom products, but her opinions do not satisfy Rule 702. They are not grounded in the governing Louisiana legal standard, not based on relevant scientific expertise, not based on any facts applicable to the products at issue, and not derived from any reliable methodology tied to the facts of this case.

Under the Louisiana Products Liability Act, warning adequacy turns on what a manufacturer knew or, in light of then-existing scientific and technological knowledge, reasonably

could have known about a product's risk profile at the time it left the manufacturer's control. That inquiry is anchored in state-of-the-art science and regulatory context.

The Court should exclude Kowitt's testimony for multiple reasons. First, Kowitt has no regulatory, scientific, or medical expertise, and admitted that she has absolutely no knowledge about the contents or characteristics of Defendant's kratom products. She therefore lacks relevant expertise to opine on the labeling requirements. Second, Kowitt's opinions are not based on any legal or regulatory requirements, but rather mostly rely on an outdated textbook that discusses how to best communicate warnings with no actual application to the products at issue. All of Kowitt's opinions are therefore improper and/or unreliable, confuse the issues, and would not assist the jury at trial.

II. FACTUAL BACKGROUND

A. Plaintiff's claims and allegations.

This is a products liability case in which Plaintiff alleges that O.P.M.S. Silver kratom caused Harmony Moller's death on February 6, 2023. Specifically, Plaintiff claims that Defendant designed an inherently and unreasonably dangerous product, that Defendant failed to adequately warn of the dangers associated with O.P.M.S. Silver kratom, and that Defendant failed to provide adequate instructions on how to avoid such risks. *See* ECF No. 100, at ¶ 61; *see also* ECF No. 184 at 2 (Plaintiff brings a "products liability claims under Louisiana's Products Liability Act, La. R.S. 9:2800.51, et seq., asserting that the kratom product consumed by Harmony [her daughter] was unreasonably dangerous due to a failure to warn and a design defect.").

B. Dr. Sarah D. Kowitt

Kowitt is an Associate Professor in the School of Medicine at the University of North Carolina at Chapel Hill, and is an academic researcher on the psychology of communications Ex.

1, Expert Report of Sarah D Kowitt, PhD, at 1. Kowitt’s research focuses on how to best communicate warnings to consumers, how information is communicated, communication campaigns, and how consumers view and respond to warnings. Ex. 2, Excerpts from Kowitt Dep. 38:12–40:5, Feb. 18, 2026. Kowitt provided the following opinions with respect to the warning labels on the O.P.M.S. products at issue in this case: (1) “The Defendant’s warnings did not warn about risks associated with product use”; (2) “The Defendant’s warnings did not provide clear instructions on how to avoid risks associated with product use”; (3) “The Defendant’s warnings did not use language that was clear or understandable”; and (4) “The Defendant’s warnings’ format did not optimally capture or hold attention.” Ex. 1, at 2–5.

III. ARGUMENT

A. Standard for admissibility.

The district court has considerable discretion to admit or exclude expert testimony under Fed. R. Evid. 702. *See, Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 138–39 (1997); *Seatrax, Inc. v. Sonbeck Int’l, Inc.*, 200 F.3d 358, 371 (5th Cir. 2000); *Tajonera v. Black Elk Energy Offshore Operations, LLC*, Civ. A. No. 13-0366, 2016 WL 3180776, at *8 (E.D. La. June 7, 2016) (Brown, J.) (citing authority). The burden rests with the party seeking to present the testimony to show that the requirements of Rule 702 are met. *Moore v. Ashland Chemical, Inc.* 151 F.3d 269, 276 (5th Cir. 1998). Rule 702 provides that an expert witness “qualified ... by knowledge, skill, experience, training or education may testify in the form of an opinion” when the following requirements are met:

- (a) The expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) The testimony is based on sufficient facts or data;

(c) The testimony is the product of reliable principles and methods; and

(d) The expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702. Rule 702 codifies the Supreme Court’s opinion in *Daubert*, which charges district courts to act as “gatekeeper” when determining the admissibility of expert testimony. *Tajonera*, 2016 WL 3180776, at *8. The purpose of a *Daubert* motion is “to ensure that only reliable and relevant expert testimony is presented to the jury.” *Rushing v. Kansas City S. Ry. Co.*, 185 F.3d 496, 506 (5th Cir. 1999) (superseded by rule on other grounds) (citing *Daubert*, 509 U.S. at 590–93).

On appeal, courts “review the admission or exclusion of expert testimony for an abuse of discretion.” *Braggs v. BP Expl. & Prod., Inc.*, No. 23-30297, 2024 WL 863356, at *2 (5th Cir. Feb. 29, 2024) (quoting *Huss v. Gayden*, 571 F.3d 442, 452 (5th Cir. 2009)). Courts “will not find error unless the ruling is *manifestly erroneous*.” *Guy v. Crown Equip. Corp.*, 394 F.3d 320, 325 (5th Cir. 2004). This provides courts with “wide latitude in determining the admissibility of expert testimony.” *Watkins v. Telsmith, Inc.*, 121 F.3d 984, 988 (5th Cir. 1997).

B. The Court should exclude Kowitt because her opinions are impermissible and offer no assistance to the jury.

A court may exclude an expert’s testimony altogether if the opinions are substantially reliant on inappropriate legal opinions and lack factual support in the record, rendering the testimony fundamentally unreliable:

[W]hile *Daubert* instructed that the focus of the reliability inquiry “must be solely on principles and methodology, not on the conclusions that they generate,” 509 U.S. at 595, 113 S.Ct. 2786, the Supreme Court later clarified that “conclusions and methodology are not entirely distinct from one another,” *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). Thus, “a district court’s focus on principles and methodology need not completely pretermit judicial consideration of an expert’s conclusions,” *Kuhn*, 686 F.3d at 625 (internal quotation marks omitted), and a district court may exclude expert testimony if it finds “that there is simply too great an analytical gap between the data and the

opinion proffered,” *Joiner*, 522 U.S. at 146, 118 S.Ct. 512. Or, to put it in the language we have frequently used both before and after *Daubert* and *Joiner*, a district court may exclude an expert’s opinion if it is “so fundamentally unsupported” by its factual basis “that it can offer no assistance to the jury.” *E.g.*, *Loudermill v. Dow Chem. Co.*, 863 F.2d 566, 570 (8th Cir. 1988); *United States v. Finch*, 630 F.3d 1057, 1062 (8th Cir. 2011).

In re Bair Hugger Forced Air Warming Devices Prods. Liab. Litig., 9 F.4th 768, 777–78 (8th Cir. 2021). If the factual basis of an expert’s opinion is so fundamentally unsupported because the expert fully relies on legal conclusions, altered facts and speculation, or fails to consider relevant facts in reaching a conclusion, the expert’s opinion can offer no assistance to the trier of fact, and is not admissible. *E.g.*, *Nebraska Plastics, Inc. v. Holland Colors Americas, Inc.*, 408 F.3d 410, 416–17 (8th Cir. 2005) (when opinion is “so fundamentally unsupported” in failure to consider relevant facts, it can offer no assistance to the trier of fact and must be excluded); *McGlinchy v. Shell Chem. Co.*, 845 F.2d 802, 807 (9th Cir. 1988) (expert study and future testimony properly excluded where it rested on speculation, unsupported assumptions, and ignored distinctions crucial to arriving at a valid conclusion); *Guillory v. Domtar Indus., Inc.*, 95 F.3d 1320, 1331 (5th Cir. 1996) (expert testimony properly excluded where it was not based upon facts in the record but on altered facts and speculation designed to bolster party’s position).

1. Kowitt is not qualified to testify as an expert regarding labeling requirements for kratom products.

The Court should exclude Kowitt’s testimony in this case because she has no regulatory expertise regarding labeling requirements, and no scientific or medical expertise regarding kratom, and therefore lacks relevant expertise to opine on labeling requirements for kratom products. *See generally Collett v. Weyerhaeuser*, 512 F. Supp.3d 665, 674 (E.D. La. 2021) (excluding proposed experts where “there is no evidence to even suggest that either doctor has had any experience with the chemical involved in this case”).

Under the Louisiana Products Liability Act (“LPLA”), a failure-to-warn claim requires proof that the product possessed a potentially damage-causing characteristic and that the manufacturer failed to exercise reasonable care in warning of that characteristic. *Stahl v. Novartis Pharm. Corp.*, 283 F.3d 254, 264 (5th Cir. 2002). Critically, Louisiana law defines that duty in terms of the “state of the art.” The LPLA provides a complete defense where, “at the time the product left his control, [the manufacturer] did not know and, in light of then-existing reasonably available scientific and technological knowledge, could not have known of the characteristic that caused the damage or the danger of such characteristic.” La. R.S. § 9:2800.59(B).

A manufacturer must warn of dangers inherent in normal use that are not obvious, and “in performing this duty the manufacturer is held to the knowledge and skill of an expert and must keep abreast of scientific knowledge, discoveries and advances.” *Short v. Otis Elevator Co.*, 502 So. 2d 1100, 1102–03 (La. Ct. App.), writ denied, 503 So. 2d 465 (La. 1987). Likewise, “[i]n performing this duty a manufacturer is held to the knowledge and skill of an expert; it must keep abreast of scientific knowledge, discoveries and advances and is presumed to know what is imparted thereby.” *Weber v. Caterpillar Mach. Corp.*, 542 So. 2d 544, 551 (La. Ct. App.), writ denied, 548 So. 2d 332, 334 (La. 1989).

Under this framework, evidence relevant to adequacy necessarily turns on what scientific and technical knowledge existed in the relevant field at the time the product left the manufacturer’s control. Any expert purporting to evaluate the adequacy of a warning must inherently possess expertise in the scientific and technical subject matter that defines the alleged risks. It depends on whether the manufacturer knew or, “in light of then-existing reasonably available scientific and technological knowledge, could not have known” of the alleged danger. La. R.S. § 9:2800.59(B). Thus, evaluating the adequacy of a kratom warning requires familiarity with kratom’s

pharmacology, toxicology, regulatory treatment, and the state of scientific knowledge regarding risks at the relevant time.

Kowitt has none of that expertise. With regards to kratom itself prior to this case, Kowitt testified as follows:

Q. Have you had any publications related to kratom?

A. No.

Q. When did you first learn about kratom?

A. I don't know for sure.

Q. Was it prior to this case?

A. I had a general awareness of kratom prior to this case.

Q. Prior to this case, had you done any work related to kratom?

A. No.

Q. What level was your knowledge at about kratom? Was it sort of on the scale of "I'm kind of aware it exists" to "I've actually looked into this a bit"?

A. I'm kind of aware it exists.

Q. Had you possibly seen it for sale?

A. Yeah, I've seen it for sale at gas stations.

Q. Okay. Any knowledge beyond it was something that people might purchase?

A. No.

Ex. 2, at 14:23–15:18. Indeed Kowitt could not even confirm whether “the product at issue in this case was a synthetic product,” “whether it was created in a laboratory versus in a food product facility,” did not know “whether the product at issue in this case had 7-hydroxymitragynine in it,” and admitted she knew nothing “about the manufacturing of the product at issue in this case.” *Id.* at 65:10–66:13.

In addition, Kowitt has never developed or drafted a warning label for *any commercial product*, nor has anyone ever retained her to do so. *Id.*, at 123:2–11. She has not done so in this case either - she vaguely opines on things she believes the labels should include, but does not have an opinion on what she believes the warnings should actually say:

Q. So what I'm struggling is we don't know what the right label would look like according to your report.

A. Well, I gave descriptions of what an adequate warning needs to include, and that's description of health risks, instructions for avoiding or mitigating those risks, and optimal design, clear, easy-to-understand language, readable –

Q. Yeah, and those are abstractions; correct?

A. I'm not sure what that means, "abstractions."

Q. Well, you give us some general guidelines of principles that should be in a warning; correct?

A. Yes.

Q. But we don't have actually what the warning should be, as drafted by you?

A. I did not provide an actual different product warning; correct.

Ex. 2, at 93:11–94:2; *see also id.*, at 20:17–22 (Kowitt did not “prepare an exhaustive list of what should be included in the warning label” nor was she “asked to develop what [she] thought would be an adequate warning label for kratom.”) And even if she had an opinion on an adequate label here, Kowitt testified that she “can’t say it would have changed [Harmony Moller’s] behavior in this case.” *Id.* at 92:15–17.

As an example, Kowitt opines that the warning should have included a “pictorial warning” with images, analogizing the warnings on the O.P.M.S. products with the proposed, non-final “FDA pictorial cigarette warnings.” *Id.* at 84:13–15. Despite this “first of a kind” proposal for cigarette warnings, Kowitt couldn’t “recall any other examples of FDA requiring pictorial warnings” and had no knowledge of the Food, Drug, and Cosmetic Act requiring pictorial warnings. Ex. 2, at 84:23–85:13. Nor could she, as there is absolutely no basis in any regulatory framework to include a pictorial warning, and indeed the FDA has never required any product in history to have pictorial warnings or graphics. Similarly, Kowitt recommended “ensuring that the warning is optimally conspicuous by using colors,” but likewise testified that she was not aware of any regulation requiring the use of colors. *Id.* at 84:16–18. She has absolutely no knowledge of the legal framework governing warnings. *See id.*, at 16:24–17:1; 22:7–15; 80:13; 82:11–13.

Moreover, Kowitt’s general experience in tobacco, cannabis and alcohol is insufficient and inapplicable here. Though Kowitt often analogized tobacco and cannabis warnings to those for

kratom products, such analogies are wildly off base, as Kowitt agreed that “cigarettes is one of the most heavily [regulated] consumer products in the market” and there have been “lots of developments in cigarette warning labels.” *Id.*, at 29:22–30:9; 41:22–42:13. As such, her experience is not sufficiently specialized to the subject matter at hand, and courts frequently exclude experts who lack the specialized experience relevant to the issues in the litigation. Kowitt’s opinions and testimony will do nothing here other than confuse the jury, and this Court should exclude it. Louisiana law holds manufacturers to the “knowledge and skill of an expert” in the relevant scientific field. *Short*, 502 So. 2d at 1102–03; *Weber*, 542 So. 2d at 551. Kowitt is not an expert in the relevant scientific field. She cannot opine on what scientific knowledge about kratom existed, whether seizure risk was established, how it compared to other substances, or what risks were reasonably knowable at the time. Without that foundation, she cannot reliably assess whether Defendant exercised reasonable care in warning of kratom’s alleged risks.

Courts routinely exclude experts who attempt to opine outside their field of specialized expertise. *See, e.g., Rheinfrank v. Abbott Lab’ys, Inc.*, 680 F. App’x 369, 381 (6th Cir. 2017) (affirming limitation on regulatory and medical expert’s testimony on antiepileptic drugs, which was outside the scope of her expertise); *Payne v. C.R. Bard, Inc.*, 606 F. App’x 940, 943 (11th Cir. 2015) (affirming exclusion of expert’s testimony on IVC filter, where expert has worked on one project involving an IVC filter more than twenty years ago, had never designed, tested, or manufactured an IVC filter, and had never taught seminars or published articles about IVC filters).

Here, Kowitt’s general research experience in tobacco, cannabis, and alcohol warnings does not qualify her to opine on the adequacy of a kratom warning under Louisiana’s state-of-the-art standard. Because Louisiana law defines adequacy by reference to scientific and technological knowledge in the relevant field, and because Kowitt lacks that field-specific expertise, her

testimony does not “fit” the governing legal standard and will not assist the jury. It should be excluded under Rule 702.

2. Kowitt’s opinions rest on a “best practices” analysis in outdated sources that are not based in science and will only serve to confuse the jury and prejudice Defendant.

Plaintiff brings a failure to warn claim as part of her products liability action. “To successfully maintain a failure-to-warn claim under the LPLA, a plaintiff must demonstrate that the product in question has a potentially damage-causing characteristic and that the manufacturer failed to use reasonable care to provide an adequate warning about this characteristic.” *Stahl v. Novartis Pharmaceuticals Corp.*, 283 F.3d 254, 264 (5th Cir. 2002). Louisiana law expressly defines that duty in state-of-the-art terms. The statute further provides a complete defense where, at the time the product left the manufacturer’s control, the manufacturer did not know and could not have known—“in light of then-existing reasonably available scientific and technological knowledge”—of the alleged danger. La. R.S. § 9:2800.59(B).

That legal framework makes clear that were an expert to be qualified to opine on the content of the warnings, that expert must possess expertise in the scientific and regulatory knowledge surrounding kratom at the relevant time. Kowitt has absolutely none. Kowitt, however, does not and cannot evaluate the body of peer-reviewed scientific literature concerning kratom and at the time of sale. She does not analyze or even possess any information about the regulatory treatment and warning of kratom by FDA, DEA, HHS, or other agencies. Nor does she or can she assess what a manufacturer exercising the “knowledge and skill of an expert” in the field could reasonably have known.

Moreover, Kowitt seemingly, and improperly, conflates “best practices” with legal requirements for warnings, further emphasizing the need for preclusion. Kowitt testified her opinion is about “best practices she gleaned from a textbook:

Q. Is your report giving us best practices for labeling requirements on the kratom product?

A. My report talks about warning best practices.

Q. Okay. And are best practices different than, say, legal requirements?

A. I'd say they could be.

Q. Okay. Sometimes they are, and sometimes there are legal requirements; correct?

A. Sometimes required warnings align with best practices, and sometimes they do not.

Q. Okay. And here, what you have told us is what the best practices will be for this product; correct?

A. I talk about requirements for warning labels and best practices.

Q. Okay. Is the content of your report requirements or best practices?

A. It's both.

Q. Okay. And what parts are requirements?

A. Well, in the beginning, I talk about general requirements for warning labels, including a marker or signal word, description of risks associated with product use, and instructions for how to reduce or eliminate risks.

Q. And what is the -- what is your authority that that is a requirement as opposed to a best practice?

A. So in Dr. Wogalter's Handbook of Warnings, he talked about these as warning label elements.

Q. So it's the textbook?

A. Yes.

Ex. 2, at 114:25–116: 5. Kowitt confirmed that her “report talks about warning best practices,” Ex. 2, at 115:2, but where her opinion veers into “general requirements for warning labels,” she bases her opinions only on “best practices” found in an 800-page textbook published in 2006. *See also* Ex. 2, at 57:9–58:5.¹ Her testimony is unreliable because the label adequacy inquiry is anchored to what was scientifically knowable, not to abstract communication theory or generalized labeling “best practices.” Indeed, it is clear that she has no meaningful familiarity with federal food or dietary supplement regulations as she admits that she has no knowledge of federal regulations and kratom. *Id.*, at 21:24–24:15. She further admits that to the extent states may have labeling requirements, they did not factor into her analysis:

¹ Despite Kowitt's almost exclusive reliance on this 800-page textbook for her opinions, Kowitt's report did not cite to any particular chapter, section, or page number, and she testified that she was unable to specifically locate where in those pages she was citing to. Ex. 2, at 86:17–87:11.

Q. Are you aware that there's some state regulations that mandate label content related to kratom products?

A. Yes, I'm aware that some states have regulated kratom and required warnings.

Q. Okay. Do you know what states those are?

A. Not off the top of my head.

Q. Did you review those regulations in preparing your report?

A. I reviewed some states' warning labels for kratom.

Q. And which ones?

A. I looked -- and this wasn't a formal analysis because sometimes it can be hard to find those regulations -- but I did a basic search on states and their warning labels for kratom.

Q. Okay. And I think you said you reviewed some of the warning labels mandated by state regulations; right?

A. I reviewed what I could find, yes.

Q. And which ones?

A. I can't recall the specific states.

Q. Okay. How many?

A. Four to seven. I tried to find as much information as I could.

Q. Okay. And did the warning label content in the state regulations that you reviewed align with your opinion that you're giving here today?

A. What do you mean by that?

Q. Were the warning labels that are mandated under state regulations consistent with your opinion?

A. Well, my opinion was about the specific warning labels in question. I didn't review states' warning labels for their adequacy.

Q. Okay. What import did those state mandated warning labels have on your opinion, if any?

A. They didn't play a role in my opinion.

Id., at 30:14–31:25. Instead, she provided an example of an adequate warning label for an iron supplement as an example of “best practices,” despite that “the FDA has mandated iron supplement products include that label[.]” *Id.*, at 20:23–21:23, 57:9–58:5.

Kowitt therefore does not ground her analysis in kratom science, toxicology, pharmacology, neurology, regulatory classification, or state-of-the-art knowledge. The Fifth Circuit has made clear that Daubert scrutiny applies not only to methodology in the abstract, but to “the facts underlying the expert’s opinion.” *Moore v. Int’l Paint, L.L.C.*, 547 F. App’x 513, 515 (5th Cir. 2013). An opinion based on “insufficient, erroneous information” fails the reliability standard. *Jacked Up, LLC v. Sara Lee Corp.*, 291 F. Supp. 3d 795, 802 (N.D. Tex. 2018) (quoting

Paz v. Brush Engineered Materials, Inc., 555 F.3d 383, 389 (5th Cir. 2009)). And while Daubert is flexible, “the existence of sufficient facts ... is in all instances mandatory.” *Hathaway v. Bazany*, 507 F.3d 312, 318 (5th Cir. 2007).

In addition to ignoring the science and legal framework that governs label adequacy, her approach is not a scientifically-acceptable methodology, and will only serve to confuse the jury as to the necessary requirements. Kowitt’s reliance of “best practices” of other products has no objective or testable criteria. She does not specify what the label should say. Her critique is abstract and not moored to the facts or legal requirements of this case or to accepted scientific or regulatory standards. Her opinions should be excluded. *See Bourelle v. Crown Equip. Corp.*, 220 F.3d 532, 539 (7th Cir. 2000) (“Many times we have emphasized that experts’ work is admissible only to the extent it is reasoned, uses the methods of the discipline, and is founded on data. Talking off the cuff—deploying neither data nor analysis—is not acceptable methodology.”); *Whyte v. Stanley Black & Decker, Inc.*, 514 F. Supp. 3d 684, 696 (W.D. Pa. 2021) (excluding expert who “testified that he believed a warning label must be provided whenever there’s a risk of significant injury—and he based this assertion simply on ‘common sense’”); *Hickerson v. Yamaha Motor Corp.*, 882 F.3d 476, 479 (4th Cir. 2018) (“But Dr. Kasbekar’s inadequate warning opinion was not supported by studies, research, or other scientific basis of verification necessary to establish reliability for Daubert purposes.”); *Moore v. Nat’l Presto Indus., Inc.*, 603 F. Supp. 3d 676, 682 (W.D. Wis. 2022) (“King also does not explain how the cooker posed any foreseeable risks of harm or that any risks could have been reduced by providing reasonable instructions. And King does not provide any examples of reasonable alternative warnings.”); *Santoro ex rel. Santoro v. Donnelly*, 340 F. Supp. 2d 464, 475 (S.D.N.Y. 2004) (“Although experts may rely on existing data, nothing in either Daubert or the Federal Rules of Evidence requires a district court to admit opinion

evidence that is connected to existing data only by the ipse dixit of the expert. They must still explain how and why they could have extrapolated their opinions from the data.”).

Kowitt does not analyze the body of scientific literature concerning kratom risks at the relevant time; she does not assess regulatory treatment of kratom (nor does she have the knowledge or experience to do so); she does not evaluate whether any alleged risk was established, speculative, or contested; and she does not tie her critique to what was reasonably knowable to a manufacturer exercising the “knowledge and skill of an expert” in the field. Instead, she substitutes “communication theory” and “best practices” for scientific analysis.

CONCLUSION

For the foregoing reasons, the Court should exclude the testimony of Sarah Kowitt. Defendant requests a hearing for argument on this motion prior to trial in this case.

Dated this 2nd day of March, 2026.

Respectfully Submitted

By: /s/ Gwendolyn C. Payton

Gwendolyn C. Payton (*pro hac vice*)

Hayley R. Ambler Louisiana State Bar No. 25848

KILPATRICK TOWNSEND & STOCKTON LLP

1420 Fifth Ave., Suite 3700

Seattle, Washington 98101

Telephone: (206) 497-9600

Facsimile: (206) 299-0414

Email: hambler@ktslaw.com

Email: gpayton@ktslaw.com

Maeghan E. Whitehead (*admitted pro hac vice*)

KILPATRICK TOWNSEND & STOCKTON LLP

2001 Ross Avenue, Suite 4400

Dallas, Texas 75201

(214) 922-7138

(214) 279-4456

mewwhitehead@ktslaw.com

COUNSEL FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on the 2nd day of March, 2026, a copy of the foregoing document was filed with the Clerk of Court and served on all counsel of record via the Court's ECF System.

/s/ Gwendolyn C. Payton

Gwendolyn C. Payton